

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Parts 0 and 1 of the Commission's)
Rules) MD Docket No. 02-339
)
Implementation of the Debt Collection)
Improvement Act of 1996 and Adoption of Rules)
Governing Applications or Requests for Benefits)
by Delinquent Debtors)

REPORT AND ORDER

Adopted: March 25, 2004

Released: April 13, 2004

By the Commission:

1. By this order, we amend our rules governing the collection of claims¹ owed the United States, 47 C.F.R. Part 1 Subpart O, to implement the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996) (DCIA). We also adopt a rule providing that we will withhold action on applications and other requests for benefits upon discovery that the entity applying for or seeking benefits is delinquent in its non-tax debts² owed to the Commission, and dismiss such applications or requests if the delinquent debt is not resolved.

I. DCIA RULES

2 In the Notice in this proceeding, we proposed many revisions to our rules based on the statutory changes adopted in the DCIA, as implemented in rules adopted by the Departments of Treasury and Justice.³ No comments relevant to the proposed rule changes were received.⁴ We therefore adopt the DCIA rule changes as generally proposed in the notice. As we noted in the Notice, the major changes to the Commission's debt collection rules include an increase in the principal claim amount from \$20,000 to \$100,000 or such amount as the Attorney General deems appropriate, that agencies are authorized to compromise or to suspend or terminate collection activity thereon without the concurrence of the Department of Justice⁵, and an increase in the minimum amount of a claim that may be referred to the

¹ The term "claim" or "debt" has the meaning used in 31 U.S.C. § 3701(b), which is any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization, or entity other than a Federal Agency.

² 31 U.S.C. §§ 3701(a) (8), 3701(b).

³ Part 1 of the Commission's Rules – Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors, 17 FCC Rcd 23096 (2002) (Notice).

⁴ Verizon filed a comment generally supporting the proposed rules.

⁵ 31 U.S.C. § 3711(a) (2).

Department of Justice from \$600 to \$2,500.⁶ The rules also reflect several new debt collection procedures under the DCIA, including but not limited to (a) transfer or referral of delinquent debt to the Department of the Treasury or Treasury-designated debt collection centers for collection (known as cross-servicing); (b) mandatory, centralized administrative offset by disbursing officials; (c) mandatory credit bureau reporting; and (d) mandatory prohibition against extending Federal assistance in the form of loan or loan guarantees to delinquent debtors. The rules adopted conform the Commission's definitions⁷ to those used by the Departments of Justice and Treasury in their regulations on the DCIA. Finally, we have added a new section 1.1935 adopting the new Treasury regulations adopting the DCIA administrative wage garnishment requirements.⁸ We also incorporate the Federal salary offset procedures, governed by 5 U.S.C. § 5514 and Office of Personnel Management (OPM) regulations.⁹ Many other adjustments have been made to take into account debts arising under our auction rules. Other provisions have been redrafted for clarity but do not substantively change debt collection procedures.

II. DELINQUENT DEBTORS

3. As noted, we received no comments concerning our proposed rules changes, including the proposed "red light rule." In the Notice, we explained that our regulatory and application fee rules already permit us as a matter of discretion to dismiss applications for failure to pay appropriate fees.¹⁰ Our auctions rules provide that an applicant must certify that it "is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency"¹¹ or its application will be dismissed.¹² We proposed that as a next step in the improvement of the management of the Commission's accounts, we would adopt a rule that anyone delinquent in any non-tax debts owed to the Commission will be ineligible for or barred from receiving a license or other benefit until the delinquency has been resolved by payment in full or by the completion of satisfactory arrangements for payment.

4. We adopt the rule changes as indicated in the Appendix to this Order. Our regulatory and application fee rules are amended (with some minor modifications from the rules proposed in the Notice) to make it clear that we will withhold action on applications or other requests for benefits by delinquent debtors and ultimately dismiss those applications or other requests if payment of the delinquent debt is not made or other satisfactory arrangement for payment is not made. In addition, we are adding a generally applicable rule (with some necessary exceptions, as discussed below) to be added as section 1.1910 of our rules as set forth in the appendix to withhold action on applications or other requests for benefits by debtors delinquent in debts other than application or regulatory fees, and to dismiss those applications or other requests if the delinquent debt is not paid or satisfactory arrangement for payment is not made.

⁶ 31 C.F.R. § 904.4

⁷ See generally revisions to 47 C.F.R. § 1.1901

⁸ See Administrative Wage Garnishment, 63 Fed. Reg. 25136 (1998) (permitting agencies to garnish up to 15 percent of the disposable pay of a debtor to satisfy delinquent non-tax debt owed), adopting 31 C.F.R. § 285.11

⁹ See 5 C.F.R. § 550.1104.

¹⁰ 47 U.S.C. §§ 158(c)(2), 159(c)(2). See 47 C.F.R. §§ 1.1109(c), 1.1109(d)(1); 1.1112(a)(1)(i), 1.1112(a)(2)(ii), 1.1157(a)(2); 1.1161(a)(1)(i), 1.1161(a)(2)(ii), 1.1164(e); and 1.1166(c)

¹¹ 47 C.F.R. § 1.2105(a)(2)(x) See also 47 C.F.R. § 1.2105(a)(2)(xi). These rules are not affected by the red light rule

¹² 47 C.F.R. § 1.2105(b)

5. Under the rules adopted here, the Commission will not approve any applications¹³ or other authorizations¹⁴ until we determine that all delinquent debt to the Commission by entities using the same taxpayer identifying number (TIN) is paid or satisfactory arrangements are made for payment. An applicant's FCC Register Number (FRN) will be used to determine all delinquent debt owed attributable to all entities using the same TIN.¹⁵ By delinquent debt we mean a claim or debt¹⁶ that has not been paid by the date specified in the initial written demand for payment, applicable agreement, instrument, or Commission rule or rules, unless other satisfactory payment arrangements have been made by that date, or, at any time thereafter, the debtor has failed to satisfy an obligation under a payment agreement or instrument with the agency, or pursuant to a Commission rule.¹⁷ All Commission electronic systems are linked with Revenue And Management Information System (RAMIS), which after the rules take effect, will check the FRN provided on the filing for eligibility-based fee sufficiency and the existence of any non-tax delinquent debt. The delinquency of any entity covered by the same TIN as that used by the entity making the filing will trigger this new rule. The delinquent debtor will be notified that a fee and delinquent debt check revealed either a fee insufficiency or delinquent debt that must be resolved within 30 days of the notification. Resolution includes payment of the debt, or other satisfactory resolution such as adequate arrangement that the debt will be paid. This resolution period is not intended to restrict our exercise of any right to recover or collect amounts due to the Commission.¹⁸ An application or other request for benefit will not be granted until the delinquent debt issue has been resolved. If the delinquency has not been resolved within 30 days of the date of the notification letter, the application or request for authorization will be dismissed.

6. We asked in the Notice how to handle those situations where a timely challenge has been filed either to the existence of or the amount of a debt, and whether such debts should be considered delinquent for purposes of the red light rule.¹⁹ No comments were received. We believe that a timely written challenge to a debt should preclude consideration of the debt for purposes of the red light rule. Accordingly, where an applicant has filed a timely administrative appeal, or a contested judicial

¹³ Applications subject to the red light rule do not include matters that are subject to more restrictive procedures, e.g., requests to waive, defer, or reduce application fees or regulatory fees under 47 C.F.R. §§ 1.1117 and 1.1166, and petitions or applications for review under 47 C.F.R. §§ 1.1117, 1.1159, and 1.1167 related to applications or other requests requiring the filing of an FRN. See ¶ 10, *infra*.

¹⁴ See Amendment of Parts 1, 21, 61, 73, 74, and 76 of the Commission's Rules: Adoption of a Mandatory FCC Registration Number, 16 FCC Rcd 16138, 16141 (2001) (FRN Order), citing 31 U.S.C. § 7701(c)(2) (DCIA definition of doing business with the federal government), 47 C.F.R. § 1.8002(a) (indicating anyone doing business with the Commission must obtain an FRN).

¹⁵ As noted in the FRN Order, 16 FCC Rcd at 16141, entities may acquire multiple FRNs. However, only delinquent debt attributable to the same TIN will trigger our red light rule.

¹⁶ We note that, pursuant to section 504(c) of the Communications Act, as amended, 47 U.S.C. § 504(c), we do not treat monetary forfeitures imposed after issuance of a notice of apparent liability as debts owed to the United States until the forfeiture had been partially paid or a court of competent jurisdiction has ordered payment of the forfeiture and such order is final.

¹⁷ See 47 C.F.R. § 1.1901(j). See also 31 C.F.R. § 900.2(b) ("a debt is 'delinquent' if it has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including post-delinquency payment agreement), unless other satisfactory payment arrangements have been made.").

¹⁸ See 47 C.F.R. §§ 1.1902 and 1.1905.

¹⁹ Cf. 31 C.F.R. § 285.13(d)(2)(iii) (a debt is not delinquent for purposes of the denial of financial assistance to delinquent debtors under 31 U.S.C. § 3720B if it is subject to time-filed administrative or judicial challenge).

proceeding, challenging either the existence of, or the amount of, a debt, such debt shall not be considered delinquent for purpose of the red light rule.²⁰ Similarly, if an applicant has submitted a written request for compromise of debt in conformance with applicable rules, such a debt shall not be considered delinquent for purposes of the red light rule.²¹ As we noted in the Notice, for purposes of Part 1, Subpart O only, an installment payment under 47 C.F.R. § 1.2110(g) will not be considered delinquent until the expiration of all applicable grace periods and any other applicable periods under Commission rules to make the payment due. The rules adopted here in no way affect the Commission's rules regarding payment for licenses (including installment, down, or final payments) or automatic cancellation of Commission licenses.²²

7. We invited comment on the exceptions to the red light rule, but received no comments. However, we raised several issues in this regard that we now resolve.

8. In the Notice, we proposed that emergency authorizations, special temporary authority (STA) applications involving safety of life or property, including national security emergencies, requests to waive, defer, or reduce applications fees or regulatory fees under 47 C.F.R. §§ 1.1117 and 1.1166, and petitions or applications for review under 47 C.F.R. §§ 1.1117, 1.1159, and 1.1167 related to other requests will not be subject to the red light rule.²³ We proposed that such applications should include the FRN, as we noted in the FRN Order.²⁴ We also proposed that we would examine any subsequent applications for regular authority in place of the emergency authorization or STA to determine if the applicant is a delinquent debtor, and would not grant such applications until such delinquencies are resolved. We adopt this proposal as set forth in the Notice. Further, we expand these exceptions to include situations where an entity's license is cancelled or expired, and where the entity seeks STA in order to continue providing service to a substantial number of customers or end-users for a brief period until those customers or end-users can be transitioned to other methods of communication. This approach minimizes service disruption to the public, including those who use radio systems for E911 and emergency communications.

9. We also sought comment on how to handle certain sections of the Communications Act that contain congressionally mandated deadlines,²⁵ or provide that if the Commission fails to act by a set date, the Commission is deemed to have approved the action sought.²⁶ In addition, we noted that certain

²⁰ For the purpose of the red light rule, we will consider appeals made to the Administrators of the Universal Service Fund and the Telecommunications Relay Services Fund and to the Billing and Collections Agent for the North American Numbering Plan as administrative appeals.

²¹ 31 U.S.C. § 3711

²² See 47 C.F.R. § 1.1915

²³ See FRN Order, 16 FCC Rcd at 16146 n.63 (citing regulations for emergency authorizations and STAs)

²⁴ Id. at 46

²⁵ See 47 U.S.C. § 271(d)(3) (Bell operating company interLATA applications must be decided within 90 days); 47 U.S.C. § 252(e)(5) (if a state commission fails to act on an interconnection agreement, the Commission shall issue an order preempting the state commission's jurisdiction within 90 days of notice of failure of the state to act); 47 U.S.C. § 405(b)(1) (Commission must act on petition for reconsideration of an order concluding a hearing under section 204(a) or 208(b)); 47 U.S.C. § 208(b)(1) (Commission must issue an order concluding an investigation of lawfulness of a charge, classification, regulation, or practice within 5 months after filing of complaint); 47 U.S.C. § 614(h)(C)(iv) (Commission must decide cable must carry complaints within 120 days).

²⁶ See 47 U.S.C. § 160(c) (Commission must act on petition for forbearance within one year, extendable by an additional 90 days, or petition deemed granted)

sections of the Commission's rules provide that uncontested applications are granted automatically once a given period of time has passed.²⁷ We proposed that in these circumstances, if the applicant is found to be a delinquent debtor at the statutory or Commission imposed deadline, the application will be dismissed, consistent with the general rule. We received no comments on this proposal. We therefore adopt the rule as proposed. We continue to believe that this result is unlikely. Debtors will receive sufficient notice in advance of a debt being classified as delinquent. We expect that most applicants will diligently check to determine whether they are delinquent in any debts owed to the Commission and resolve any such delinquencies in a timely manner. Nonetheless, dismissal of such applications for delinquencies is possible.

10. The red light rule permits delinquent debtors to resolve the delinquency within 30 days to avoid dismissal of an application. We proposed that the 30-day resolution period would not apply to applications or requests for benefits where more restrictive rules govern treatment of delinquent debtors. For example, under existing rules auction applicants must already certify that they are not delinquent in non-tax debt or their short form application will be dismissed and they will be ineligible to participate in an auction.²⁸ We noted, however, that the red light rule would apply to subsequent applications filed by winning bidders, *e.g.*, the long-form application. We adopt this proposal without modification.

11. In the Notice, we asked whether the Bankruptcy Code requires an exception to the red light rule. No comments were received concerning this question. We have concluded that we must adopt an exception to the red light rule to comply with Section 525(a) of the Bankruptcy Code as interpreted by the Supreme Court in FCC v. Nextwave Personal Communications, Inc., 537 U.S. 293 (2003). Therefore, the rules provide that applications or requests for benefits to which 11 U.S.C. § 525(a) applies will not be dismissed by virtue of the applicant's delinquent status. We are not always aware that a delinquent debtor has filed for bankruptcy. Therefore, if an applicant receives a letter pursuant to section 1.1910 and that applicant has filed for bankruptcy, it should notify the Managing Director in writing of its status so that it can be determined whether section 525(a) applies.

12. In some instances, such as tariffs, filings with the Commission go into effect immediately (or within one day), thus precluding a check to determine if the filer is a delinquent debtor before the request goes into effect.²⁹ In the tariff situation, we have the ability to take appropriate action against a tariff after its effective date for noncompliance with any of our rules.³⁰ We adopt this proposal for tariffs that go into effect immediately on filing and where it is later discovered that the filer is a delinquent debtor. We will not apply this rule to multi-party tariffs where one party is discovered to be a delinquent debtor, as we do not wish to penalize the other parties to the tariff.

13. We did not propose to pre-screen FOIA requestors for delinquent debt under the proposed procedures, as our FOIA rules already address situations where FOIA requesters previously failed to pay FOIA fees.³¹ We adopt this proposal as previously stated. We note, however, that if an applicant is delinquent in paying its FOIA fees that delinquency will trigger the red light rule for other applications.

²⁷ See, *e.g.*, 47 C.F.R. § 63.03 (a), which allows an applicant to transfer control of the domestic lines or authorization to operate on the 31st day after the date of public notice listing a domestic section 214 transfer of control application as accepted for filing as a streamline application.

²⁸ See 47 C.F.R. § 1.2105(a)(2)(x) and (xi).

²⁹ See 47 U.S.C. §§ 203, 206.

³⁰ See 47 C.F.R. § 205

³¹ See 47 C.F.R. § 0.469(a)(2)

14. We proposed that if we adopted the red light rule, it would apply to any applications or requests for benefits pending at the time the rule goes into effect. Pending applications or requests for benefits are subject to a check for debt delinquency at any time before the request is granted. No comments were received on this proposal, and we adopt it as stated. Any submissions on or after the effective date of the red light rule will be subject to screening for delinquent debt.

15. The FRN became mandatory on December 3, 2001.³² Prior to that date, we encouraged entities doing business with the Commission to obtain and include the FRN in their filings with the Commission.³³ While many applicants included the FRN prior to December 3, 2001, many did not. We proposed that applications still pending if we ultimately adopt the red light rule that were filed prior to December 3, 2001 without an FRN will not be subject to the rule due to the administrative difficulties in checking for delinquent debt on those applications. Absent any comments on this issue, we adopt the proposal as stated.

III. DELEGATION OF AUTHORITY

16. Pursuant to the DCIA and the FCCS, the head of the agency is empowered to collect claims of the United States for money or property arising out of activities of the agency,³⁴ compromise debts that do not exceed \$100,000 without the approval of the Department of Justice,³⁵ and to suspend or terminate collection activity on a debt.³⁶ The DCIA rules we adopt here (and the predecessor rules) define the Chairman as the head of the agency for DCIA purposes,³⁷ but neither the DCIA implementing rules nor our existing delegations of authority expressly address various administrative determinations specifically assigned to the head of the agency under the DCIA.³⁸ Additionally, the head of the agency is authorized to waive the ban on the issuance of Federal financial assistance to persons or entities delinquent in non-

³² See FRN Order, 16 FCC Rcd at 16148.

³³ See New Commission Registration System (CORES) to be Implemented July 19, 15 FCC Rcd 18754 (2001).

³⁴ See 31 U.S.C. § 3711 (a) (1), 31 C.F.R. Part 901.

³⁵ See 31 U.S.C. § 3711(a) (2), 31 C.F.R. Part 902.

³⁶ See 31 U.S.C. § 3711(a) (3); 31 C.F.R. Part 903.

³⁷ See 47 C.F.R. § 1.1901(c).

³⁸ See 47 C.F.R. § 0.211 and Part 1, Subpart O (2002).

tax debt owed to the Federal Government, and to delegate this authority to the Chief Financial Officer or the Deputy Chief Financial Officer³⁹ Our existing regulations did not specifically address this authority.⁴⁰ We amend the delegations of authority to make clear that the Chairman may make all administrative determinations under the DCIA We also amend the rules to delegate to the Managing Director and the General Counsel authority to make administrative determinations (except waiver determinations under section 3720B) under the DCIA. Finally, we add a delegation to the Chief Financial Officer and the Deputy Chief Financial Officer to make the waiver determination under 31 U.S.C. § 3720B. We adopt these rules of agency organization, procedure and practice without notice and comment.⁴¹

IV. PROCEDURAL MATTERS AND ORDERING CLAUSES

17 Regulatory Flexibility Certification. We hereby certify that the rules adopted in this Order will not have a significant economic impact on a substantial number of small entities.⁴² The amendment of our Part 1 Subpart O rules to conform to the DCIA streamline our debt collection rules reflecting the statutory language contained in the DCIA, and therefore a regulatory flexibility analysis is not required.⁴³ The rule amendments requiring payment of delinquent debts before final action is taken on an application or other request for a federal benefit will not affect a substantial number of small entities. We estimate that there are approximately 1,225 debtors currently delinquent in their debt to the Commission out of approximately 750,000 entities that hold an FRN. This means that potentially less than ¼ percent of entities doing business with the Commission could be affected by this rule. Of the 1,225 delinquent debtors, we do not know how many are small entities, but we can reasonably posit that less than all 1,225 are small entities. Consequently, fewer than one percent of entities subject to this rule are small entities. We have no reason to expect that this percentage will change over time. Therefore, we certify pursuant to 5 U.S.C. § 605(b) that the “red light rule” does not require a regulatory flexibility analysis.

18. For further information concerning this Order, contact Regina W. Dorsey, Special Assistant to the Chief Financial Officer, at 1-202-418-1993, or by e-mail at <Regina.Dorsey@fcc.gov>, or Laurence H. Schecker, Office of General Counsel, Administrative Law Division, at 1-202-418-1720, or by e-mail at <Laurence.Schecker@fcc.gov>.

19. Accordingly, IT IS ORDERED THAT, pursuant to Sections 4(i), 8(c)(2), 9(c)(2), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 158(c)(2), 159(c)(2), and 303(r), and 5 U.S.C. § 5514, the rules set forth in Appendix A are hereby ADOPTED, effective 30 days from publication in the Federal Register, except that changes to rules 1.1112, 1.1116, 1.1161 and 1.1164 and newly adopted rule 1.1910 are effective October 1, 2004.

³⁹ See 31 U.S.C. §§ 3720B(a) (waiver of ban on issuance of Federal financial assistance to delinquent debtors by agency head); 3720B(b) (delegation of waiver authority to Chief or Deputy Chief Financial Officer).

⁴⁰ See 47 C.F.R. §§ 0.211, 0.231, and Part 1, Subpart O (2002).

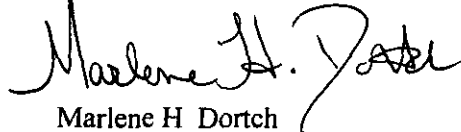
⁴¹ See 5 U.S.C. § 553(b)(A)

⁴² 5 U.S.C. § 605(b) The amendment of the delegations of authority is adopted without notice and comment and therefore does not require regulatory flexibility analysis. See 5 U.S.C. § 604(a)

⁴³ See Federal Claims Collection Standards, 65 FR 70390, 70395 (2000) (certifying under section 605(b) that the FCCS rules did not require a regulatory flexibility analysis).

20. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Marlene H. Dortch", written over the printed name.

Marlene H Dortch
Secretary